

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

LONNIE R. WHITLEY §
VS. § CIVIL ACTION NO. 5:07-CV-32
PAUL KASTNER §

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Lonnie R. Whitley, a prisoner confined at the Federal Correctional Institution in Texarkana, Texas, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Petitioner has not demonstrated that he was convicted of a nonexistent offense as required by the actual innocence prong of *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). A claim based on *United States v. Booker*, 543 U.S. 220 (2005), is not cognizable in a Section 2241 petition. *United States v. Padilla*, 416 F.3d 424, 427 (5th Cir. 2005).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this 2nd day of August, 2007.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE